

NORTHERN TERRITORY OF AUSTRALIA

BUILDING ACT
No. 31 of 1983
TABLE OF PROVISIONS

Section

PART I - PRELIMINARY

1. Short title
2. Commencement
3. Repeal
4. Interpretation
5. Application
6. Act to bind the Crown

PART II - ADMINISTRATION

Division 1 - Arrangements with Municipalities

7. Arrangements with municipalities

Division 2 - Appointments

8. Building Controller
9. Delegation by Building Controller
10. Building inspectors
11. No action against Building Controller or building inspectors
12. Powers of inspectors

*Division 3 - Building Referees Board
of the Northern Territory*

13. Building Referees Board of the Northern Territory
14. Composition of Board and appointment of members
15. Meetings of Board
16. Functions of Board
17. Powers of Board

*Division 4 - Building Standards Committee
of the Northern Territory*

18. Building Standards Committee of the Northern Territory
19. Composition of Committee and appointment of members
20. Meetings of Committee
21. Powers of Committee

*Division 5 - General Provisions Relating to
Board and Committee*

22. Period of appointment
23. Chairman of Board and Committee

- 24. Resignation of members
- 25. Dismissal of members
- 26. Disclosure of interest

PART III - BUILDING WORK

Division 1 - General

- 27. Requirements for building work

Division 2 - Building Approvals

- 28. Building approvals
- 29. Applications for review

PART IV - PRESCRIBED NOTICES

- 30. Stop work notices
- 31. Notice specifying building work
- 32. Service of notices
- 33. Notice of alteration or demolition
- 34. Urgent building work
- 35. Objections
- 36. Appeal to Supreme Court
- 37. Failure to comply with order of Board or Supreme Court
- 38. Time not to run pending objection or appeal

PART V - OCCUPANCY OF BUILDINGS

- 39. Application
- 40. Prescribed certificates
- 41. Occupation of buildings
- 42. Vacating building after offence of occupying building without prescribed certificate
- 43. Copies of certificate

PART VI - MISCELLANEOUS

- 44. Service of notices, &c.
- 45. Representation
- 46. Authorized person deemed to be owner
- 47. Evidence
- 48. Fees
- 49. Offences generally
- 50. Continuing offences
- 51. Offence by body corporate
- 52. Institution of proceedings
- 53. Regulations

PART VII - TRANSITIONAL

- 54. Transitional

SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

No. 31 of 1983

AN ACT

Relating to building work and buildings
in certain areas

[Assented to 28 July 1983]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART I - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Building Act 1983*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. REPEAL

The Acts listed in the Schedule are repealed.

4. INTERPRETATION

(1) In this Act, unless the contrary intention appears -

"approved" means approved by the Building Controller;

"architect" means an architect within the meaning of the *Architects Act*;

"Board" means the Building Referees Board of the Northern Territory established by section 13;

"building" includes -

(a) a part of a building;

Building

- (b) an addition to a building; and
- (c) a shed, outbuilding, workshop, garage, privy, fence more than one metre in height, advertising sign or hoarding, mast, antenna, aerial or swimming pool with a capacity which is not less than 10 kilolitres,

whether permanent or temporary;

"building approval" means the approval under section 28 by the Building Controller for the commencement or carrying out of building work;

"building area" means an area -

- (a) declared under section 5(2)(a) to be a building area;
- (b) to which a planning instrument applies and which is not the subject of a declaration under section 5(2)(b); or
- (c) which was a building area under the *Building Act* as in force immediately before the commencing date;

"Building Controller" means the person appointed under section 8(1) and includes a Deputy Building Controller appointed under section 8(3) when he is exercising the powers or performing the functions of the Building Controller;

"building inspector" means a person appointed under section 10(1) and includes the Building Controller;

"building work", in relation to a building, means work in connection with the erection, alteration, relocation or demolition of the building, repairs of a structural nature to the building or the provision in a building of services or works for sewerage, drainage or water;

"Chairman" means the person appointed under section 23(1) to be the Chairman of the Board and Committee;

"commencing date" means the date fixed under section 2;

"Committee" means the Building Standards Committee of the Northern Territory established by section 18;

Building

"Deputy Chairman" means the person appointed under section 23(1) to be the Deputy Chairman of the Board and Committee;

"employee" means an employee within the meaning of the *Public Service Act*;

"instrument of determination" means an instrument of determination issued under the *Planning Act*;

"notice of alteration or demolition" means a notice under section 33(1);

"notice specifying building work" means a notice under section 31(1);

"order" means an order of the Board or Supreme Court under this Act;

"owner" means -

(a) in relation to land held under a lease from the Crown - the lessee of the land; or

(b) in relation to land held in fee simple - the holder of the estate in fee simple;

"planning instrument" means a planning instrument within the meaning of the *Planning Act*;

"practising structural engineer" means a person with qualifications in civil or structural engineering acceptable to the Institution of Engineers Australia for the grade of corporate member and who is actively engaged in structural design and supervision of building construction;

"prescribed notice" means a notice under Part IV;

"stop work notice" means a notice under section 30(1) or (2).

(2) In this Act, unless the contrary intention appears, a reference to -

(a) the erection of a building includes, where the case requires, a reference to the removal of a building and its re-erection, with or without alteration, after its removal from another location;

(b) the alteration of a building includes a reference to -

(i) the demolition of part of the building; and

(ii) an addition to the building;

Building

- (c) the demolition of a building includes a reference to the demolition of part of the building; and
- (d) carrying out building work in accordance with approved plans includes a reference to the carrying out of building work in accordance with plans, or those plans as amended, whether before or after the commencement of the building work, as approved in accordance with this Act.

5. APPLICATION

(1) Subject to this section, this Act applies to and in relation to building work and buildings in a building area.

(2) The Minister may declare -

- (a) areas to be building areas for the purposes of this Act; and
- (b) areas and buildings to be areas and buildings to which this Act does not apply.

(3) Subject to sub-section (4), in the application of this Act to building work in respect of which building approval is required by this Act, this Act and the Regulations prevail over all other Acts and instruments of a legislative nature.

(4) The provisions of this Act are in addition to, and do not derogate from, the provisions of any other law in force in the Territory in relation to scaffolding or construction safety.

6. ACT TO BIND THE CROWN

This Act binds the Crown in right of the Territory and, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

PART II - ADMINISTRATION

Division 1 - Arrangements with Municipalities

7. ARRANGEMENTS WITH MUNICIPALITIES

(1) The Minister may enter into an arrangement with a council, within the meaning of the *Local Government Act*, for the exercise or performance by, or by a person on behalf of, the council within its municipality of a power or function of the Building Controller or a building inspector for the purposes of this Act, and the council or that person may, in that event, exercise that power or perform that function in accordance with the arrangement.

Building

(2) Where a power has been exercised or a function performed by or on behalf of a council under an arrangement under this section, prescribed fees payable by a person in relation to the exercise of that power or the performance of that function are payable to the council, and may be recovered by the council as a debt due and payable to it.

(3) A reference in this Act to the exercise of a power or performance of a function by the Building Controller or a building inspector includes a reference to the exercise of that power or performance of that function by or on behalf of a council under an arrangement under this section and a person so exercising that power or performing that function has the same protection as the Building Controller or building inspector, as the case may be, under this Act.

Division 2 - Appointments

8. BUILDING CONTROLLER

(1) The Minister may, by notice in the *Gazette*, appoint a member, or a person qualified to be a member, of the Royal Australian Institute of Architects or Institution of Engineers Australia to be the Building Controller for the purposes of this Act.

(2) The Building Controller shall, in addition to the powers and functions conferred on him by this Act, take such steps as are reasonably necessary for securing the enforcement of this Act, the Regulations and notices and orders under this Act.

(3) The Minister may, on the recommendation in writing of the Building Controller, appoint a person to be a Deputy Building Controller, or more than one such person to be Deputy Building Controllers, for the purposes of this Act.

(4) A Deputy Building Controller may exercise such powers and may perform such functions of the Building Controller as the Minister specifies in the notice of appointment.

(5) The Minister shall cause to be issued to the Building Controller and each Deputy Building Controller an identity card containing a photograph and the signature of the Building Controller or Deputy Building Controller, as the case may be.

(6) The Building Controller is, in the exercise of his powers and the performance of his functions, subject to the directions of the Minister.

Building

9. DELEGATION BY BUILDING CONTROLLER

(1) The Building Controller may, by instrument in writing, delegate to a person any of his powers and functions under this Act, other than this power of delegation.

(2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purpose of this Act, be deemed to have been exercised or performed by the Building Controller.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Building Controller.

10. BUILDING INSPECTORS

(1) Subject to sub-section (3), the Building Controller may, by instrument in writing, appoint such persons as he thinks fit to be building inspectors for the purposes of this Act.

(2) The Regulations may prescribe the qualifications required by a building inspector.

(3) The Building Controller shall not appoint a person as a building inspector who does not hold the prescribed qualifications for a building inspector.

(4) The Building Controller shall issue to a building inspector an identity card containing a photograph and the signature of the building inspector, verified by the signature of the Building Controller.

11. NO ACTION AGAINST BUILDING CONTROLLER OR BUILDING INSPECTORS

No action or proceeding, civil or criminal, lies against the Building Controller or a building inspector for or in relation to an act or thing done in good faith and in his capacity as the Building Controller or a building inspector, as the case may be.

12. POWERS OF INSPECTORS

(1) Where building approval has been obtained for building work, a building inspector may inspect the building work during the carrying out of the work, for the purposes of ascertaining whether that work is being or has been carried out in accordance with the building approval.

(2) Where a building inspector has reasonable grounds for believing that -

Building

- (a) building work is being or has been carried out and building approval has not been obtained for the building work or the work is not being or has not been carried out in accordance with this Act, the Regulations or a notice or order under this Act;
- (b) a completed building has deteriorated to such an extent, in the case of a building in relation to the erection or alteration of which building approval has been obtained or plans and specifications have been approved under the *Building Act* as in force immediately before the commencing date, as to be unfit for use as a building of the class specified in the approval, or for the purpose stated in the plans and specifications so approved, for the most recent building work that has been carried out in relation to that building; or
- (c) a building is no longer structurally sound,

he or another building inspector may carry out an inspection of the building work or building at any reasonable time.

(3) Where the requirements of a prescribed notice or the directions in an order relating to building work have not been complied with, a building inspector may, with such assistance as he thinks fit, enter upon the land on which the building work referred to in the notice or order is being or has been carried out and cause to be carried out the requirements or directions.

(4) A person shall not, without reasonable excuse, obstruct a building inspector, or a person acting under the directions of a building inspector, acting in pursuance of this section.

Penalty: \$1,000.

(5) For the purposes of an inspection under this section, the Building Controller may -

- (a) authorize the making of tests of the soil on which the building work is to be or has been commenced or building materials used or to be used in the building or building work; or
- (b) order the opening, cutting into or pulling down of the building or building work.

Building

Division 3 - Building Referees Board of the Northern Territory

13. BUILDING REFEREES BOARD OF THE NORTHERN TERRITORY

There is hereby established the Building Referees Board of the Northern Territory.

14. COMPOSITION OF BOARD AND APPOINTMENT OF MEMBERS

(1) The Board shall consist of 4 members one of whom shall be an architect and another of whom shall be a practising structural engineer.

(2) The Minister may, by notice in the *Gazette*, appoint a person to be a member of the Board.

(3) The exercise of a power or the performance of a function of the Board is not affected by reason only of there being a vacancy or vacancies in the membership of the Board.

(4) The Minister may, in relation to each member, appoint an alternate and where a member is unable to attend a meeting of the Board or participate in the business of the Board, the alternate appointed in relation to the member may exercise the powers of that member.

15. MEETINGS OF BOARD

(1) The Chairman shall call such meetings of the Board as are necessary for the exercise of its powers and the performance of its functions.

(2) The Minister may, at any time, direct the Chairman to convene a meeting of the Board and the Chairman shall convene a meeting in accordance with the direction of the Minister.

(3) At a meeting of the Board -

(a) 3 members constitute a quorum;

(b) questions arising shall be determined by a majority of the votes of the members present and voting and in the event of an equality of votes the person presiding shall have a casting vote as well as a deliberative vote; and

(c) subject to this Act, the Board shall determine the procedure to be followed at or in connection with the meeting.

(4) The Board shall keep records of its meetings.

Building

16. FUNCTIONS OF BOARD

The functions of the Board are to hear and determine -

- (a) applications to review decisions of the Building Controller in relation to applications for building approval;
- (b) objections in relation to prescribed notices; and
- (c) other applications or matters that are, under this Act, made or referred to the Board.

17. POWERS OF BOARD

(1) Subject to this Act, the Board has power to do all things that are necessary or convenient to be done for or in connection with or incidental to the exercise of its powers and the performance of its functions.

(2) For the purposes of appeals and inquiries under this Act, the Board has the same power to summon witnesses, to require the production of books and documents and to take evidence on oath as a Board of Inquiry appointed under the *Inquiries Act*.

(3) A witness summoned to attend or appearing before the Board has the same protection as a witness in proceedings in the Supreme Court.

Division 4 - Building Standards Committee of the Northern Territory

18. BUILDING STANDARDS COMMITTEE OF THE NORTHERN TERRITORY

There is hereby established the Building Standards Committee of the Northern Territory.

19. COMPOSITION OF COMMITTEE AND APPOINTMENT OF MEMBERS

- (1) The Committee shall consist of -
 - (a) the Chairman and Deputy Chairman;
 - (b) the Building Controller or, in his absence, a Deputy Building Controller;
 - (c) a registered architect nominated by the Northern Territory Chapter of the Royal Australian Institute of Architects;
 - (d) a practising structural engineer nominated by the Institution of Engineers Australia Northern Territory Division;

Building

- (e) a person nominated by the Master Builders' Association of the Northern Territory; and
- (f) such other persons as the Minister thinks fit.

(2) The Minister shall, by instrument in writing, appoint the members of the Committee, other than the Chairman, Deputy Chairman and Building Controller.

(3) Where, under sub-section (2), the Minister appoints a person to be a member of the Committee, he may, in relation to such a member, appoint an alternate and where a member is unable to attend a meeting of the Committee or participate in the business of the Committee, the alternate appointed in relation to the member may exercise the powers of that member.

(4) A person is not eligible for appointment or re-appointment as a member of the Committee representing an organization, or an alternate of such a member, unless -

- (a) he is a member of that organization;
- (b) he is ordinarily resident in the Territory; and
- (c) his name is submitted to the Minister by that organization in relation to the appointment or re-appointment.

(5) Sub-section (4)(c) does not apply where the organization does not, within the time specified by the Minister in a notice in writing to the organization requesting the nomination of a person, nominate a person.

20. MEETINGS OF COMMITTEE

(1) The Chairman or, in his absence, the Deputy Chairman shall call such meetings of the Committee as are necessary for the exercise of its powers and performance of its functions.

(2) The Minister may at any time direct the Chairman to convene a meeting of the Committee and the Chairman shall convene a meeting in accordance with the direction of the Minister.

- (3) At a meeting of the Committee -
 - (a) 4 members constitute a quorum;
 - (b) questions arising shall be determined by a majority of the votes of the members present and voting and in the event of an equality of votes the person presiding shall have a casting vote as well as a deliberative vote; and

Building

(c) subject to this Act, the Committee shall determine the procedure to be followed at or in connection with the meeting.

(4) The Committee shall keep records of its meetings.

21. POWERS OF COMMITTEE

(1) The Committee may consider -

(a) building standards, techniques, products and materials; and

(b) the operation of this Act and the Regulations.

(2) The Committee may, as it thinks fit, report and make recommendations to the Minister, Board or Building Controller on matters which it considers under sub-section (1).

(3) Without limiting the generality of the Committee's powers under sub-section (1), the Committee shall consider the Australian Model Uniform Building Code as amended from time to time and may obtain specific technical advice in order to enable it to exercise its powers.

(4) The Minister may direct the Committee to consider a matter which it has power to consider under sub-section (1) and to make recommendations, as it thinks fit, to him on the matter.

Division 5 - General Provisions Relating to Board and Committee

22. PERIOD OF APPOINTMENT

(1) Subject to this Act, a member of the Board or Committee holds office until the expiration of such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(2) Where a period of appointment is not specified in the instrument of appointment of a member of the Board or Committee the member holds office, subject to this Act, for 3 years.

23. CHAIRMAN OF BOARD AND COMMITTEE

(1) The Minister shall appoint a person who is, or is to be, a member of the Board to be the Chairman of the Board and Committee and another such person to be the Deputy Chairman of the Board and Committee.

Building

(2) The Chairman or, in his absence, the Deputy Chairman, shall preside at meetings of the Board and Committee.

(3) In the absence of the Chairman and Deputy Chairman from a meeting of the Board or Committee, the members of the Board or Committee, as the case may be, present at a meeting shall elect a member to preside at the meeting, and that member may exercise the powers and discharge the duties of the Chairman for that meeting.

24. RESIGNATION OF MEMBERS

A member of the Board or Committee may resign his office by writing signed by him and delivered to the Minister.

25. DISMISSAL OF MEMBERS

(1) The Minister may terminate the appointment of a member for inability, inefficiency, misbehaviour or physical or mental incapacity.

(2) Where a member of the Board or Committee -

- (a) is absent, except on leave granted by the Board or Committee, as the case may be, from 3 consecutive meetings of the Board or Committee;
- (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (c) in the case of a member whose appointment was dependent on him being registered or the holder of specified qualifications - ceases to be so registered or qualified or his right to practise by virtue of those qualifications is suspended or cancelled;
- (d) in the case of a member nominated by an organization - ceases to be a member of that organization or his nomination is withdrawn;
- (e) ceases to be ordinarily resident in the Territory; or
- (f) in the case of a member who is a member by virtue of being an employee - ceases to be an employee,

the Minister shall terminate the appointment of the member.

Building

26. DISCLOSURE OF INTEREST

(1) A member of the Board or Committee who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board or Committee, otherwise than as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons and of which he is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board or Committee.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the Board or Committee, and the member -

- (a) shall not, while he has that interest, take part after the disclosure in any deliberation or decision of the Board or Committee in relation to that matter; and
- (b) shall be disregarded for the purposes of constituting a quorum of the Board or Committee in relation to that matter.

PART III - BUILDING WORK

Division 1 - General

27. REQUIREMENTS FOR BUILDING WORK

(1) Building work in a building area shall not be commenced or carried out unless the building work -

- (a) has been approved;
- (b) where the land on which the building work is to commence or be carried out is land held under a lease from the Crown - is not contrary to a covenant, condition or other provision of the lease;
- (c) where there is in existence at the commencement or carrying out of the building work a planning instrument affecting the land - conforms with and does not contravene the planning instrument; and
- (d) where there is in existence at the commencement or carrying out of the building work an instrument of determination in relation to the land - conforms with and does not contravene the instrument of determination.

Building

(2) Where building work is commenced or carried out in contravention of sub-section (1), the owner of the land on which the building work is commenced or carried out and a person who commences or carries out the building work are each guilty of an offence.

Division 2 - Building Approvals

28. BUILDING APPROVALS

(1) The owner of land on which it is proposed to commence or carry out building work or a person who proposes to commence or carry out building work may apply, in the prescribed form, to the Building Controller for approval of the proposed building work.

(2) Subject to this Part, the Building Controller shall consider an application under sub-section (1) and shall -

- (a) where the building as proposed to be erected or altered complies with the Regulations - approve the application; or
- (b) in any other case - refuse to approve the application or approve the application subject to amendments agreed upon between him and the applicant,

in such manner as he thinks fit.

(3) The Building Controller may approve an application under sub-section (1) where the requirements and standards of an aspect of the application are not set out in the Regulations but he is satisfied that the building as proposed to be erected or altered is structurally sound for the purpose for which it is to be built and the health and fire safety standards are adequate.

(4) The Building Controller may, in a case referred to in sub-section (3), refer, where he considers that the circumstances so require, the case to the Board and, in that case, the Building Controller shall give effect to the decision of the Board.

29. APPLICATIONS FOR REVIEW

(1) Where the Building Controller refuses under section 28(2) to approve an application, he shall cause notice of his decision to be given in writing to the applicant setting out the reasons for his decision.

(2) A person to whom a notice of the decision of the Building Controller has been given under sub-section (1) may, within 14 days after the date of the notice, or within such further time as the Chairman in a particular

Building

case allows, lodge with the Chairman an application in writing for a review by the Board of the Building Controller's decision.

(3) Where more than 28 days have expired since a person applied under section 28(1) and the Building Controller has not -

- (a) approved the application; or
- (b) refused to approve the application and given notice of his decision under sub-section (2),

the person may lodge with the Chairman an application in writing for a review by the Board of that application.

(4) Upon an application to review under sub-section (2) or (3), the Board shall hear the application and direct the Building Controller to -

- (a) approve the application either without modification or with such modifications as the Board specifies;
- (b) grant building approval; or
- (c) in the case of an application to review a decision of the Building Controller, confirm that decision.

PART IV - PRESCRIBED NOTICES

30. STOP WORK NOTICES

(1) Where building work in a building area is being carried out -

- (a) by a person who has not obtained building approval for the building work or who is not employed by or under contract to a person who has obtained building approval for the building work;
- (b) otherwise than in accordance with the approved plans for the building work;
- (c) otherwise than in accordance with the conditions subject to which building approval for the building work is granted;
- (d) contrary to this Act;
- (e) on a parcel of land held under lease from the Territory, contrary to a provision, covenant or condition of the lease; or

Building

- (f) contrary to a planning instrument in relation to the building work,

the Building Controller may, by notice in writing, prohibit the carrying out of further building work or of such building work as he specifies in the notice.

(2) The Building Controller may, by notice in writing, prohibit the carrying out of specified building work in relation to building work for the erection or alteration of a building where -

- (a) the building is not in accordance with approved plans; and

- (b) the proposed building or building as proposed to be altered would not, when completed, be structurally sound.

(3) A stop work notice ceases to be in force -

- (a) where it is revoked by the Building Controller, by notice in writing;

- (b) on the expiration of 7 days after it was issued unless the Building Controller, within 7 days, issues a notice specifying building work;

- (c) where a notice specifying building work is issued - when the work specified in the notice is carried out;

- (d) where it is revoked under section 35; or

- (e) where it is deemed to have been revoked under sub-section (4).

(4) Where, when a stop work notice is given on the grounds specified in sub-section (1)(a) -

- (a) an application is made under this Act for building approval in relation to the work within 7 days after the giving of the notice; and

- (b) having regard to all the circumstances and the building work so far carried out, the Building Controller grants building approval,

the stop work notice shall be deemed to have been revoked.

31. NOTICE SPECIFYING BUILDING WORK

(1) Where a stop work notice has been given on a ground other than the grounds specified in section 30(1)(a), the Building Controller may, within 7 days after

Building

the service of the stop work notice, by a further notice, specify the building work (including work by way of demolition) that is required to be carried out to ensure that the building work for which the building approval was granted will be carried out in accordance with the approved plans, this Act and any other conditions subject to which the building approval was granted, and shall, by the further notice, require the building work specified in the notice to be carried out within the period which is specified in the further notice.

(2) Where a stop work notice has been issued in pursuance of section 30(2), the Building Controller shall not require the carrying out of building work by a further notice under sub-section (1) other than such building work as is necessary for the proposed building or the building as proposed to be altered to be, when completed, structurally sound.

(3) Where -

- (a) an application for building approval is not made; or
- (b) the Building Controller rejects an application made,

in the circumstances referred to in section 30(4) the Building Controller, in a case in which the stop work notice has not ceased to be in force, may, by notice in writing, require the owner of the land on which the building work was being carried out before the giving of the stop work notice to carry out the building work (including demolition) which is specified in the notice within such period as is specified in the notice.

(4) An act or thing done by a person for the purpose of complying with a notice under this section shall be deemed not to be a contravention of a stop work notice.

32. SERVICE OF NOTICES

A stop work notice or notice specifying building work may be served -

- (a) on the owner of the land on which the building work referred to in the notice is being carried out;
- (b) on the person by whom the building work referred to in the notice is being carried out;
- (c) in the case of a stop work notice, on any person carrying out building work referred to in the notice; or

Building

- (d) jointly on 2 or more of the persons to whom the notice may be given in the appropriate case under paragraph (a), (b) or (c).

33. NOTICE OF ALTERATION OR DEMOLITION

(1) Where -

- (a) a building has been erected or an alteration has been made to a building and building approval has not been obtained in respect of the building work;
- (b) building work has not been carried out in accordance with building approval, a notice under this Part or an order; or
- (c) the Building Controller finds, on inspection, that -
 - (i) a building has deteriorated to such an extent as to be unfit for any type of reasonable use;
 - (ii) building work has not been completed when the building approval in relation to the building work lapsed;
 - (iii) a building or part of a building is not structurally sound; or
 - (iv) the external condition of a building is such that injury to persons or damage to property may result from a part of the building becoming detached,

the Building Controller may serve on the owner of the land on which the building work has been carried out or on which the building has been erected a notice directing him to carry out the building work (including demolition) as is specified in the notice and may in a notice in relation to the building work specified in the notice require the owner to submit plans for approval and obtain building approval in relation to those plans.

(2) Where building work has been carried out in the circumstances referred to in sub-section (1)(a), a notice of alteration or demolition is deemed to have been revoked where the Building Controller, on application under this Act by or on behalf of the owner of the land made within 7 days after the service of the notice, grants building approval for the building work.

(3) A notice served on a person under sub-section (1) directing him to carry out building work may specify safety precautions to be taken by the person in relation

Building

to the building work, being safety precautions that are reasonable in the circumstances.

- (4) Where an owner of land -
 - (a) is directed by a notice of alteration or demolition to carry out building work (not being demolition); and
 - (b) is not required by the Building Controller under sub-section (1) to submit plans for approval and obtain building approval,

he shall pay to the Building Controller those fees that would have been payable if he had been required to submit plans for approval and obtain building approval.

34. URGENT BUILDING WORK

- (1) Where a prescribed notice -
 - (a) may be served; or
 - (b) has been served but the period specified in the notice has not expired,

the Minister may certify that, in his opinion, having regard to -

- (c) the urgency of the case; or
- (d) any other exceptional circumstances,

the Building Controller should undertake specified building work as soon as possible.

(2) Where the Minister certifies that the Building Controller should undertake, as soon as possible, specified building work in relation to a building, the Building Controller -

- (a) may enter the land upon which the building stands and do such work on the building, including work by way of demolition or alteration, as is required to ensure that the specified building work is undertaken; and
- (b) may remove and sell materials used in the building which are not required.

(3) The Building Controller may employ or contract with a person to do building work under sub-section (2) on such terms as he thinks fit.

Building

(4) The Building Controller may remove to a convenient place any material from a building demolished in carrying out building work under sub-section (2) and sell the materials, as he thinks fit.

(5) The proceeds of a sale referred to in sub-section (2) or (4) shall be applied -

- (a) in reimbursing the expenses of demolishing, altering or removing the building or part of the building; and
- (b) in paying any fees or penalties due under this Act by the owner,

and the balance of the proceeds shall be paid to the owner or person entitled to the proceeds.

(6) Where the proceeds of a sale referred to in sub-section (2) or (4) are insufficient to reimburse the Building Controller the amount of any expenses incurred by him and of fees which are due, the balance of the expenses or fees or both shall be a debt due and payable to the Territory by the owner or builder, as the case may be.

(7) The exercise of the powers conferred by this section shall not relieve a person from liability for a penalty incurred by reason of his breach of this Act or the Regulations.

35. OBJECTIONS

(1) Where a prescribed notice has been served -

- (a) the owner of land; or
- (b) the person who is carrying out the building work,

to which the notice relates, may, within 14 days after the service of that notice, or such further time as the Chairman allows, lodge his objection in relation to the notice with the Chairman.

(2) The Board shall hear an objection under sub-section (1) and may, by order -

- (a) where it is satisfied that compliance with the requirements of the prescribed notice is justified - dismiss the objection; or
- (b) where it is not so satisfied - revoke the prescribed notice, or revoke the prescribed notice and give such directions to be complied with by the person who lodged the objection, as it thinks fit.

Building

36. APPEAL TO SUPREME COURT

(1) Where the Board makes an order under section 35(2), the Building Controller or the person who lodged the objection may, within 21 days after the order of the Board, appeal to the Supreme Court against the order.

(2) Jurisdiction to hear and determine appeals under this section is vested in the Supreme Court.

(3) An appeal under this section is an appeal *de novo* and the Supreme Court may confirm the order of the Board or revoke the order and make such other order, including the giving of directions to be complied with by the appellant, as it thinks fit.

37. FAILURE TO COMPLY WITH ORDER OF BOARD OR SUPREME COURT

(1) A person shall not contravene or fail to comply with an order.

Penalty: \$5,000.

(2) Where an offence against sub-section (1) has been committed by a person by reason of his failure to comply with an order of the Board or Supreme Court within the period specified in the order, the person commits an additional offence on each day during which the failure to comply continues, notwithstanding that the period (calculated subject to section 38) has elapsed.

Penalty: \$100 for each day during which the failure to comply continues.

38. TIME NOT TO RUN PENDING OBJECTION OR APPEAL

(1) Where an objection to a prescribed notice is lodged under section 35, time does not run, for the purposes of calculating a period specified in the notice, until -

(a) the day of the order of the Board; or

(b) where a person has appealed to the Supreme Court against the order of the Board - the day of the order of the Supreme Court,

in relation to the appeal.

(2) Where -

(a) in an order of the Board, the Board gives a direction to be complied with by a person within a period specified in the direction; and

Building

- (b) an appeal is lodged with the Supreme Court against the order,

time does not run, for the purpose of calculating that period of time, until the day of an order of the Supreme Court in relation to the appeal.

PART V - OCCUPANCY OF BUILDINGS

39. APPLICATION

(1) Subject to section 41, this Part does not apply to or in relation to a prescribed class of buildings.

(2) A prescribed certificate issued under this Part in relation to a building does not affect the liability of a person to comply with a law of the Territory relating to the building.

40. PRESCRIBED CERTIFICATES

(1) In this section, "prescribed requirements", in relation to building work, means the building approval for the building work, the conditions to which the building approval for the building work is subject or a prescribed notice in relation to the building work.

(2) Where building work involving the erection or alteration of a building has been completed in accordance with the prescribed requirements for the building work, the Building Controller shall, on the application of the owner of the land on which the building work has been carried out, issue a prescribed certificate certifying that the building work has been completed in accordance with those requirements and that the building as erected or altered is fit for occupation as a building of the prescribed class specified in the prescribed certificate.

(3) Where building work, involving the erection or alteration of a building, is completed and is not in accordance with the prescribed requirements for the building work, the Building Controller may, on the application of the owner of the land on which the building work has been carried out but subject to sub-sections (4) and (5), issue a prescribed certificate certifying that the building as erected or altered is fit for occupation as a building of the prescribed class specified in the prescribed certificate.

(4) The Building Controller shall not issue a prescribed certificate under sub-section (3) unless he is satisfied that -

Building

- (a) where the land on which the building work has been carried out is land held under a lease from the Territory - the building as erected or altered is not contrary to a covenant, condition or other provision of the lease;
- (b) where there is in existence a planning instrument affecting the land - the building as erected or altered conforms with and does not contravene the planning instrument;
- (c) where there is in existence an instrument of determination in relation to the land - the building as erected or altered conforms with and does not contravene the instrument of determination; and
- (d) the building as erected or altered -
 - (i) is substantially in accordance with the prescribed requirements; and
 - (ii) is structurally sound for the purposes for which it is to be occupied.
- (5) Where -
 - (a) the appropriate acceptable requirements and standards for a matter as prescribed; or
 - (b) the Building Controller has approved under this Act, other requirements and standards in relation to that matter and those requirements and standards,

have not been complied with, the Building Controller may, before issuing a prescribed certificate under subsection (3), require the applicant, by notice in writing, to carry out such work as is necessary to secure compliance with the appropriate acceptable requirements and standards as prescribed for that matter or the other approved requirements and standards, as the case may be, and the Building Controller may refuse to issue the prescribed certificate until the work specified in the notice has been carried out.

(6) Where a part of a building has been erected in accordance with the prescribed requirements in so far as they relate to that part of the building, the Building Controller may, on an application made by the owner of the land on which the building is being erected, issue to the owner of the land a prescribed certificate certifying that that part of the building is fit for occupation as part of a building of the class specified in the building approval for the building work.

Building

- (7) Where -
 - (a) a prescribed certificate has been issued under sub-section (6) in relation to a part of a building; and
 - (b) the Building Controller, on completion of the whole of the building work, issues a prescribed certificate under sub-section (3) for the whole building,

the Building Controller shall cancel the prescribed certificate under sub-section (6) that relates to a part of the building.

(8) Where a prescribed certificate is issued under this section in respect of the whole or a part of a building, the Building Controller shall -

- (a) where the building consists of 2 or more storeys - specify in the prescribed certificate the number of storeys in the building or part of the building; and
- (b) where the building or part of the building as proposed to be erected or altered is designed for a prescribed use - specify in the prescribed certificate the type of construction in accordance with the prescribed classification and the number of persons for whom exit space is provided from each floor.

(9) For the purposes of this section -

- (a) a certificate under the hand of a surveyor licensed under the *Licensed Surveyors Act* that the siting of a building as erected or altered is in conformity with the siting of the building as shown on the building approval for the building work is prima facie evidence of that fact;
- (b) a certificate signed by the holder of a licence under the *Plumbers and Drainers Licensing Act* that the plumbing, sewerage and drainage work carried out in the building work is in conformity with such of the prescribed requirements for the building work as relate to plumbing, sewerage and drainage work is prima facie evidence of that fact; and
- (c) a certificate signed by a practising structural engineer certifying that a building is structurally sound for the purposes for which it is to be occupied is prima facie evidence of that fact.

Building

41. OCCUPATION OF BUILDINGS

(1) Subject to this section, a person shall not occupy, or permit another person to occupy, a building or part of a building unless the Building Controller has issued under section 40 a prescribed certificate that the building or that part of the building is fit for occupation.

(2) Where the Building Controller has issued under section 40 a prescribed certificate that a part of a building is fit for occupation, a person shall not occupy or use or permit another person to occupy or use another part of the building until a prescribed certificate has been issued under section 40 that the other part is fit for occupation.

42. VACATING BUILDING AFTER OFFENCE OF OCCUPYING BUILDING WITHOUT PRESCRIBED CERTIFICATE

(1) Where, after being convicted for an offence in relation to section 41, a person continues to occupy, or continues to permit another person to occupy, a building or a part of a building in contravention of that section for an offence against which he has been so convicted, the Building Controller may, by notice in writing to the occupier or to the person permitting the occupation, or to both, require the building to be vacated within a period specified in the notice.

(2) Where a person has been served with a notice under sub-section (1), he shall comply with that notice.

Penalty: \$500 and \$50 for each day during which the failure to comply continues.

43. COPIES OF CERTIFICATE

(1) A copy of a prescribed certificate issued under section 40 shall be kept in the office of the Building Controller, and a person may inspect the prescribed certificate at that office during the hours which the office is open for business.

(2) Where the Building Controller issues a prescribed certificate under section 40 in respect of a building or part of a building and a copy of a similar certificate in respect of that building or a part of that building is already being kept in his office, the Building Controller shall replace the earlier certificate with a copy of the later certificate issued under section 40.

Building

PART VI - MISCELLANEOUS

44. SERVICE OF NOTICES, &c.

(1) A notice or other document under this Act addressed to one person may be served -

- (a) by delivering the notice to the person personally;
- (b) by posting (by pre-paid registered or certified post) it as a letter addressed to the person at his last-known place of residence or business; or
- (c) by affixing the notice in a prominent position on the building or, in the case of an alteration to a building, on the part of the building being altered, to which the notice relates.

(2) Where a notice under this Act is addressed jointly to 2 or more persons, a number of copies of the notice equal to the number of persons to whom the notice is addressed shall be signed by the person giving the notice, and one of those copies shall be served, in any of the manners specified in sub-section (1), on each of those persons.

45. REPRESENTATION

A person who has appealed to the Board or has lodged an application or objection with the Board may be represented by another person and that person may examine and cross-examine witnesses and address the Board on behalf of the person on whose behalf he appears.

46. AUTHORIZED PERSON DEEMED TO BE OWNER

(1) Where the owner of land may make an application under this Act, he may authorize a person to make the application on his behalf.

(2) Where a person authorized under sub-section (1) makes an application on behalf of the owner of land, the application is deemed to have been made by the owner and any notice served on the authorized person is deemed to be served on the owner.

47. EVIDENCE

In proceedings before a court of competent jurisdiction or the Board unless the contrary is proved -

Building

- (a) a document purporting to be a copy of a prescribed notice and certified as a true copy by the Building Controller shall be received in evidence as a true copy of the prescribed notice;
- (b) a prescribed notice certified as a true copy under this section shall be received in evidence as a true copy given by the person purporting to give it and to have been given on the date specified in the certified copy of the prescribed notice;
- (c) a document purporting to be a certificate given by the Building Controller and certifying that a specified person was or was not the holder of a building approval for specified building work is evidence that on a specified date or during a specified period that person was, or was not, as the case may be, the holder of such a building approval;
- (d) a certificate signed by the Building Controller certifying that a document annexed to the certificate is a true copy of plans approved as part of the building approval by the Building Controller or of a part of such plans is evidence of the plans or of such part of the plans as so approved;
- (e) a certificate signed by the Building Controller and certifying that, at a specified date, a prescribed certificate had not been issued in respect of a building or part of a building specified in the first-mentioned certificate is evidence that, at that date, a prescribed certificate had not been issued under that section, in respect of that building or part of that building; and
- (f) a prescribed certificate purporting to have been given under this Act shall be received in evidence, without further proof, as a prescribed certificate given by the person purporting to give it without proof of the signature of the person by whom it purports to have been given.

48. FEES

(1) There shall be paid to the Building Controller such fees in relation to an application and other matters under this Act as are specified in, or calculated in accordance with, the Regulations.

(2) Where a fee is payable in relation to the doing of an act by the Building Controller, the Building Controller shall not do that act until the fee has been paid.

Building

(3) Where a fee is payable in respect of an application or the lodging of a document, the application or the document shall be deemed not to have been made or lodged until the fee has been paid.

(4) The Regulations may make provision for or in relation to the refund, in such circumstances as are prescribed, of fees paid under this Act.

49. OFFENCES GENERALLY

(1) A person shall not contravene or fail to comply with this Act, the Regulations or a notice under this Act.

(2) A person who contravenes or fails to comply with this Act, the Regulations or a notice under this Act for which a penalty is not provided by this Act or the Regulations, other than this section, is punishable upon conviction by a fine of \$3,000 or imprisonment for 2 years.

50. CONTINUING OFFENCES

A person who has been convicted of contravening or failing to comply with this Act, the Regulations or a notice under this Act is guilty of a further offence against this Act or the Regulations where the contravention or failure to comply continues (notwithstanding that the period has elapsed) after he has been convicted and upon conviction of the further offence is punishable by a penalty of \$50 for each day during which the offence continues.

51. OFFENCE BY BODY CORPORATE

(1) Where a body corporate is guilty of an offence against this Act or the Regulations, an officer of the body corporate who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence is also guilty of that offence.

(2) For the purposes of this section, "officer", in relation to a body corporate, includes -

- (a) a director, secretary, executive officer or employee of the body corporate;
- (b) a receiver, or a receiver and manager, of the property, or part of the property, of the body corporate;
- (c) an official manager or a deputy official manager of the body corporate;
- (d) a liquidator of the body corporate; and

Building

- (e) a trustee or other person administering a compromise or arrangement made between the body corporate and its creditors.

52. INSTITUTION OF PROCEEDINGS

(1) Proceedings for an offence against this Act or the Regulations -

- (a) shall be dealt with summarily; and
- (b) shall not be commenced without the consent in writing of the Building Controller.

(2) Consent under sub-section (1)(b) may be proved by the production of a notice in the prescribed form purporting to be signed by the Building Controller.

(3) Notwithstanding any other law in force in the Territory, a proceeding for an offence against this Act or the Regulations may be instituted within 2 years after the act or omission alleged to constitute the offence.

53. REGULATIONS

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular in relation to -

- (a) standards (expressed in terms of performance, type of material, method of construction or otherwise) in relation to -
 - (i) preparation of land for building work;
 - (ii) strength and stability;
 - (iii) fire precautions (including resistance to the outbreak and spread of fire, the installation and maintenance of emergency lighting, the means of prevention and extinguishing of fire in or on buildings and land, the means of escape in the event of fire and the protection of occupants in the event of fire);
 - (iv) resistance to moisture;
 - (v) resistance to the transmission of heat;
 - (vi) resistance to the transmission of sound;
 - (vii) durability;
 - (viii) resistance to infestation;

Building

- (ix) drainage, sewerage and water supply;
 - (x) ventilation (including the provision of open space for ventilation);
 - (xi) natural lighting (including the provision of open space for natural lighting) and artificial lighting;
 - (xii) heating and air-conditioning;
 - (xiii) services, installations and ancillary equipment (including services, installations and ancillary equipment for the provision of water supply services to land or buildings or within buildings, for sanitary purposes, for sewerage and drainage, for the disposal of refuse, for ventilation or air-conditioning and for the conveyance of fumes, smoke, vapour or steam or heated water);
 - (xiv) accommodation (including the minimum height or dimension of rooms and the provision of sanitary facilities and other facilities relating to health and amenity);
 - (xv) access; and
 - (xvi) prevention of danger and obstruction;
- (b) the classification of buildings into classes and the application or non-application to buildings or classes of buildings of the provisions of the Regulations;
 - (c) regulating or prohibiting the conversion of buildings of one class into buildings of another class;
 - (d) standards of non-compliance with which a dwelling may be declared unfit for human habitation or in a state of disrepair;
 - (e) regulating or prohibiting the use of specified materials (including materials used for insulation purposes or as floor or wall coverings);
 - (f) the testing of building materials whether before, during or after construction of a building and the methods to be used in the testing;
 - (g) connecting and dividing buildings;

Building

- (h) the demolition, removal and reconstruction of buildings;
- (j) the restoration, repair and maintenance of, and alterations to, buildings;
- (k) the protection of adjoining property;
- (m) the siting of buildings, including their height, location and the proportion of open space to be provided around them;
- (n) the minimum area of land on which buildings may be constructed;
- (p) the designation of fire zones and the establishment of registers of fire zones;
- (q) regulating or prohibiting the construction of buildings on land liable to flooding or storm surge;
- (r) regulating or prohibiting the construction of buildings or the performance of building work in, on, over or under a public place;
- (s) regulating or prohibiting the construction of advertising signs and hoardings and regulating the size and construction of such signs and hoardings;
- (t) regulating or prohibiting the construction of fixtures attached to or projecting from the outside of buildings;
- (u) ruinous or dangerous buildings;
- (w) the construction and maintenance of floor, wall and roof coverings and of finishes to buildings;
- (y) the safety of members of the public in relation to all or any of the matters referred to in the Regulations;
- (z) demolishing, opening or cutting into work to facilitate inspection for the purposes of the Regulations;
- (za) prohibiting the use of buildings constructed or converted otherwise than in accordance with the Regulations or constructed or converted for a use other than that for which originally approved;

Building

- (zb) the time which may elapse between the granting of building approval and the commencement of the construction, removal or demolition of a building and between the commencement and the completion of the construction, removal or demolition of a building;
- (zc) certificates of classification;
- (zd) fees which may be charged and received by the Building Controller for a building approval granted under this Act or for an inspection made or other service provided under the Regulations;
- (ze) the practice and procedure in relation to applications, notices, orders or approvals under this Act, the conditions to be complied with and carrying the Regulations into effect;
- (zf) forms for use under the Regulations; and
- (zg) penalties, not exceeding \$3,000 or imprisonment for 2 years, for a breach of a regulation.

PART VII - TRANSITIONAL

54. TRANSITIONAL

(1) In this Part, unless the contrary intention appears, "repealed laws" means the *Building Act* and *Building Regulations*, as in force immediately before the commencing date.

(2) Where a person has not contravened the repealed laws before the commencing date by commencing or carrying out building work, he is not contravening or failing to comply with this Act where -

- (a) in relation to building work for which a licence or permit under the repealed laws was not required - he carries out the building work in accordance with the repealed laws and directions, if any, of a building inspector; or
- (b) in relation to building work for which a licence or permit under the repealed laws was required - he carries out the building work in accordance with -
 - (i) the licence or permit;
 - (ii) such plans and specifications for the building as were approved by the Board under the repealed laws;
 - (iii) the repealed laws; and

Building

- (iv) directions, if any, of a building inspector,

and the Building Controller may, as he thinks fit, grant building approval to the person notwithstanding that the person has not applied for building approval or paid the fee for an application for approval of building work.

(3) Where building approval referred to under sub-section (2) is granted under section 28, the person in relation to whom the approval is granted shall comply with the approval.

(4) Where a person had been granted a licence or permit under the repealed laws, the right to commence or carry out building work existing by virtue of the licence or permit is abolished except where not less than 2 years have expired since the licence or permit was granted, in which case that licence or permit continues in force until the expiration of 2 years after the date it was granted.

(5) An application under section 9A(2) of the *Building Act* as in force immediately before the commencing date which is made before the commencing date, but in relation to which a licence or permit has not been issued under that Act, shall be treated as an application under section 28(1) of this Act except that no further fees in relation to that application are required to be paid by the person who made the application.

(6) The Supreme Court continues to have jurisdiction to hear and determine appeals under section 10 of, and to set aside requirements made by the Building Board under, the *Building Act* as in force immediately before the commencing date.

(7) Where the Supreme Court makes an order in an appeal made by virtue of sub-section (6), the order shall be treated as an order of that Court under this Act.

(8) For the purposes of section 40, where building work is commenced before, but is completed after, the commencing date and building approval under this Act is not obtained, "prescribed requirements", in relation to building work for the building, means -

- (a) the licence or permit under the repealed laws;
- (b) such plans and specifications for the building work as were approved by the Board under the repealed laws;
- (c) requirements of the Board or Supreme Court under the repealed laws;
- (d) the Building Regulations as in force immediately before the commencing date; and

Building

(e) directions, if any, of a building inspector.

SCHEDULE

Section 3

Building Ordinance 1955
Building Ordinance 1962
Building Ordinance 1964
Building Ordinance 1967
Building Ordinance 1972
Building Ordinance (No. 2) 1972
Building Ordinance 1977
